United Nations CRPD/C/19/4

Convention on the Rights of Persons with Disabilities

Distr.: General
6 April 2018

Original: English

Committee on the Rights of Persons with Disabilities

Follow-up progress report on individual communications, adopted by the Committee at its nineteenth session (14 February–9 March 2018)

A. Introduction

1. The present report was prepared pursuant to article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which states that the Committee shall hold closed meetings when examining communications under the Protocol and, after examining a communication, shall forward its suggestions and recommendations, if any, to the State party concerned and to the petitioner. The report is also prepared in line with rule 75, paragraph 7, of the rules of procedure of the Committee, which stipulates that the Special Rapporteur or working group shall report regularly to the Committee on follow-up activities, to ascertain the measures to be taken by States parties to give effect to the Committee's Views.

2. The present report sets out the information received by the Special Rapporteur for follow-up on Views between the seventeenth and nineteenth sessions pursuant to the Committee's rules of procedure, and the analyses and decisions adopted by the Committee during its nineteenth session. The assessment criteria were as follows:

Assessment criteria	
Action satisfactory	
A	Measures taken largely satisfactory
Action partially satisfactory	
B1	Substantive action taken, but additional information required
B2	Initial action taken, but additional action and information required
Action not satisfactory	
C1	Reply received but actions taken do not implement the Views/recommendations
C2	Reply received but not relevant to the Views/recommendations
No cooperation with the Committee	
D1	No reply to one or more recommendations or parts of recommendations
D2	No reply received following reminder(s)

GE.18-05433(E)
1805433

Please recycle

Assessment criteria	
Measures taken are contrary to the recommendations of the Committee	
E	The reply indicates that the measures taken go against the Views/recommendations of the Committee

B. Communications

1. Communication No. 8/2012, *X v. Argentina*

Views:	11 April 2014
Author's comments (first and second sets):	16 June and 17 November 2014. Transmitted to State party for comment.
Decision of the Committee:	At its fourteenth session, the Committee decided to discontinue the follow-up procedure with an "A" assessment of the measures taken by the State party (see CRPD/C/14/3).
Additional information from the State party:	On 19 July 2017, the State party submitted that, on 22 June 2017, the Court (Tribunal Oral Federal de San Martín) had granted domiciliary detention to Mr. X and ordered that the decision be communicated to the Committee.
Decision:	A letter of acknowledgement will be sent to the State party, taking note of the initiative of the Court and reiterating that the follow-up procedure is closed.

2. Communication No. 7/2012, *Noble v. Australia*

Views:	2 September 2016
First reply from the State party:	Due on 13 March 2017. Received on 15 June 2017.

The State party submitted that it had given due consideration to the Views, which it had published on the website of the Australian Attorney-General's Department, in compliance with the Committee's recommendations.

It acknowledged its obligations under the Convention and expressed its commitment to provide persons with disabilities with adequate support and reasonable accommodations to enable them to exercise their legal capacity before the courts.

The Western Australian Government acknowledged that there had been significant failures in the way the author had been dealt with and with the operation of the Criminal Law (Mentally Impaired Accused) Act 1996 (WA) more generally. The Western Australian Government deeply regretted the period of time during which the author had been detained under the provisions of the Act and was committed to continuing to provide the author with support, with a view to him living independently in the community.

The Western Australian Government had already undertaken a review of the Act and would be seeking to implement legislative changes to bring about a fairer and more just system for dealing with persons with mental and intellectual impairment who were accused of a criminal act.

However, the State party submitted that it disagreed with the Committee's Views on admissibility in respect of articles 12, 13 and 15, and reiterated the position expressed in its observations in that regard.

As regards the author's allegations under articles 5 (1) and (2) of the Convention, the State party reiterated the arguments developed in its observations and submitted that the Act: (a) constituted legitimate differential treatment; (b) did not differentiate on the basis of

2. Communication No. 7/2012, *Noble v. Australia*

disability but on the basis of mental capacity; (c) preserved the fair trial rights of Western Australian persons with mental impairments; and (d) was a form of reasonable accommodation. It argued that the Act was designed to ensure that persons with mental incapacity were not subjected to a criminal trial that they could not understand or in which they could not effectively participate. It differentiated between persons fit to stand trial and those unfit to stand trial, on the basis of reasonable and objective criteria, not on the basis of disability. It considered that the Act provided sufficient safeguards and that the legislation guaranteed that individuals who did not understand the nature of the charges against them would not be tried in order to ensure that persons who did not have the capacity or ability to appropriately defend themselves were not found guilty as a result.

The State party further submitted that the Committee had not specified the types of measures that it considered a State party should provide to a person who did not have, either temporarily or permanently, the capacity to understand the nature of a criminal trial. It argued that the Committee should provide guidance on the types of measures that the State could have implemented to further or better assist an author to exercise his or her legal capacity consistently with article 5 of the Convention. The State party also reiterated its long-standing concerns about the definitive approach to capacity taken by the Committee, which it considered failed to recognize that capacity — as opposed to the right to recognition before the law — was a spectrum.

The State party referred to the jurisprudence of the Human Rights Committee, according to which it is for the courts of States parties concerned to review the evaluation of the facts as well as the application of the law in a particular case, and not for the Committee, unless the Courts' decisions are manifestly arbitrary or amount to a denial of justice.[1] It submitted that the Committee should align its views with those of the Human Rights Committee. In that connection, it specified that the Human Rights Committee had found that detention under mental health legislation from 1984 to 1993 had not been a violation of the author's right under article 9 of the International Covenant on Civil and Political Rights. It came to that conclusion by noting that the author had been assessed under domestic legislation according to objective criteria. Furthermore, the Committee noted that the author's committal order had been issued according to law, based on an opinion of three psychiatrists. The periodic review of the author's situation by psychiatrists and the courts had also been a relevant factor in the Committee's finding in that case that the State party had not violated article 9.

The State party reiterated that the decisions of its authorities with respect to the author's detention under legislation had not been arbitrary, had been made according to law and had been reviewed periodically, and submitted that the author's detention would not have been found to be a violation of article 14 (1) (b) of the Convention following the Human Rights Committee's reasoning. As regards the Committee's finding of a violation of article 15, it reiterated that it considered that the author's allegations in that regard had not been substantiated.

The State party therefore submitted that it did not consider appropriate to implement all of the Committee's recommendations. Nevertheless, the Government of Western Australia was committed to providing the author with support through the various agencies overseeing his case with a view to helping him to live independently in the community, and would give due consideration, on its merits, to any further request for assistance by the author.

In respect of the Committee's recommendation as to reimbursement of legal costs, the State party submitted that the author had received legal aid assistance for proceedings in domestic courts and that it was unaware of any legal costs borne by the author.

Action taken:	Transmitted to the authors on 15 June 2017, with a deadline for comments of 12 September 2017.
Author's comments:	On 19 July 2017, the author submitted that he did not wish to provide further comments and relied on previous submissions.

[1] See *A. v New Zealand* (CCPR/C/66/D/754/1997), para. 7.3.

2. Communication No. 7/2012, *Noble v. Australia*

Decision:	A follow-up letter will be sent to the State party taking note with satisfaction of its commitment to support the author and reiterating the Committee's position as expressed in its Views, and recalling the Committee's general comment No. 1 (2014) on equal recognition before the law. The Committee will also request the State party to specify which measures of support have been adopted for the author with a view to enable him to live independently in the community, and to provide him with adequate compensation measures.

3. Communication No. 1/2010, *Nyusti and Takács v. Hungary*

Views adopted:	16 April 2013
First reply from the State party:	Due on 24 October 2013. Received on 13 December 2013. Analysed at the eleventh session (see CRPD/C/11/5).
Authors' comments (first set):	13 March 2014. Analysed at the eleventh session (see CRPD/C/11/5).
Decision adopted at the eleventh session:	Follow-up letter sent to the State party on 8 May 2014 (see CRPD/C/12/3), with a deadline for comments of 7 November 2014.
Second reply from the State party:	Received on 29 June 2015 and 27 May 2016. Analysed at the sixteenth session (see CRPD/C/16/3).
Decision adopted at the sixteenth session:	Follow-up ongoing.
Actions taken:	On 6 June 2016, the Special Rapporteur for follow-up on Views sent a letter to the State party: (a) welcoming the compensation that had been paid to the author; and (b) requesting updated information on the implementation of Committee's Views, the implementation of the four-year development programme for automatic teller machines and the outcome of the consultations initiated by the State party. Deadline for response: 2 August 2016
Third reply from the State party:	Received on 3 August 2016.
Actions taken:	16 August 2016: acknowledgement of follow-up information sent to the State party. Transmittal to the author for comments. Deadline for response: 17 October 2016. 27 March 2017: first reminder sent to the author. Deadline for response: 26 May 2017. 19 January 2018: second reminder sent to the author. Deadline for response: 19 March 2018.
Decision:	Follow-up ongoing. A third reminder will be sent to the author if no reply is received. Follow-up actions to be determined at the next session in view of the author's comments.

4. Communication No. 4/2011, *Bujdosó et al. v. Hungary*

Views adopted:	9 September 2013
First reply from the State party:	26 March 2014 (see CRPD/C/12/3)
Authors' comments (first and second sets):	5 May 2014 (see CRPD/C/12/3)
Decision adopted at the eleventh session:	Follow-up letter sent to the State party on 8 May 2014 (see CRPD/C/12/3). Deadline for comments: 7 November 2014.
Second reply from the State party:	8 July 2014 (see CRPD/C/12/3)
Authors' comments (third set):	25 August 2015
Third reply from the State party:	29 June 2015 (see CRPD/C/15/3)

Decision adopted at the fifteenth session:

Follow-up ongoing. Follow-up letter to the State party on 14 June 2016 (see CRPD/C/15/3), with a deadline for comments of 9 August 2016.

Fourth reply from the State party:	Received on 12 August 2016 (see CRPD/C/16/3)
Authors' comments (fourth set):	17 August 2016 (see CRPD/C/16/3)
Action taken:	Follow-up letter sent to the State party on 18 November 2016 (see CRPD/C/17).
Fifth reply from the State party:	Received on 17 January 2017 (see CRPD/C/17/3).
Authors' comments (fifth set):	Date received: 10 March 2017 (see CRPD/C/17/3).
Closed meeting of the Rapporteur with the State party:	6 April 2017.
Decision adopted at the seventeenth session:	"D1" assessment: follow-up ongoing.
Action taken:	Follow-up letter sent by the Rapporteur to the State party on 23 November 2017: The Committee requested the State party to provide information about the measures taken to ensure that legislation on supported decision-making and the right to vote complied fully with the Convention and the Committee's Views. As regards the payment of compensation to the authors of the complaint, the Committee welcomed the payment of the legal costs related to the procedures carried out by the authors of the communication. Nonetheless, it reiterated its concern that the payment of the rest of the compensation awarded by the government decree in June 2015 still had not been paid, as at April 2017. The Committee expressed its concern that, according to the provided information, the Ministry of Human Capacities had decided that it would recognize the legal representatives of the authors only for the procedure before the Committee, but that the authors had to be

4. Communication No. 4/2011, *Bujdosó et al. v. Hungary*

	represented by their legal guardians for all the procedures before national authorities. The Committee therefore reiterated its request that the State party provide information on the progress made in the payment of the compensation determined in June 2015, and on the measures taken to ensure that the compensation paid could be managed by the authors in compliance with their own will and decisions. Deadline for response: 23 January 2018.
Decision:	A reminder will be sent to the State party, Follow-up action to be determined at the next session in view of the State party's reply and of the author's comments.

5. Communication No. 21/2014, *F. v. Austria*

Views adopted:	21 August 2015
Deadline for first reply from the State party:	9 March 2016
First reply from the State party:	Received on 24 February 2016 (see CRPD/C/16/3)
Author's comments (first set):	Received on 22 June 2016 (see CRPD/C/16/3)
Action taken:	On 5 December 2016, the Special Rapporteur sent a follow-up letter to the State party (see CRPD/C/17/3).
Second reply from the State party:	Received on 24 January 2017 (see CRPD/C/17/3).
Action taken:	State party's follow-up observations transmitted to the author for comments with a deadline of 13 April 2017.
Author's comments (second set):	Received on 27 January 2017 (see CRPD/C/17/3).
Decision adopted:	Follow-up ongoing with a "B2" assessment, and a follow-up letter to be sent by the Rapporteur.

Action taken:

On 21 November 2017, a follow-up letter was sent to the State party.

The Committee took note of the collaboration of the State party and of the steps taken to implement the Committee's Views.

It welcomed that the State party published its Views in German on the websites of the Federal Chancellery and the Federal Ministry of Labour, Social Affairs and Consumer Protection in a format that was accessible to blind and partially sighted persons. It also welcomed that the websites were linked to the website of the Office of the United Nations High Commissioner for Human Rights, where the Views were published.

However, it considered that the follow-up dialogue should be maintained on the points below.

The Committee noted that, as a matter of principle, the State party considered that no compensation could be paid to the author of the complaint for the legal costs incurred as the State party did not provide compensation to an applicant in treaty body procedures for costs incurred in the filing of communications, and that the State party could therefore not

5. Communication No. 21/2014, *F. v. Austria*

comply with that recommendation

The Committee expressed its regret in that regard and referred to article 26 of the Vienna Convention on the Law of Treaties in that the duty to cooperate with the Committee arises from an application of the principle of good faith in the observance of all treaty obligations. It also recalled that the same principle applied to all the Committee's recommendations, including with regard to remedies.

As to the measures taken to remedy the lack of accessibility to the information visually available for persons with visual impairment for all lines of the tram network, the Committee noted with satisfaction the commitment of the Linz Linien GmbH to continue its ongoing efforts to further improve accessibility for persons with disabilities. It also noted that all ticketing machines of the Linz Linien GmbH were being equipped with "text to speak" functions, and that the smartphone application "Qando", which provided information on Austrian public transport schedules, had been optimized for the use of blind and partially sighted persons. The Committee further noted with satisfaction that the Linz Linien GmbH was the first public transport company in Austria which allowed persons with disabilities to be accompanied by another person free of charge. However, the Committee highlighted the importance that the measures taken should also aim at enabling blind and partially sighted persons who were not accompanied to use the transport.

As to the measures taken to guarantee that Austrian transport networks built in the future complied with the principle of universal design, the Committee took note that the regulation of the Federal Minister competent for public transport regarding the building and operation of tramways, federal Law Gazette II 76/2000, was under revision. However, the Committee expressed its concern that, according to the information available, article 5 (a) of the draft foresaw that "persons with a limited mobility should have access without any particular obstacles", but did not make reference to persons with any other kind of disability, including blind persons, or persons with sensory impairment.

In view thereof, the Committee requested the State party to provide additional information with regard to the following points:

(a) The measures taken by the State party to comply with the Committee's Views to provide adequate compensation to the author for the legal costs incurred during domestic proceedings and the costs incurred in filing the present communication, in compliance with the obligation of States parties to act in good faith, both in their participation in the procedures under the Optional Protocol and in relation to the Convention itself;

(b) The measures taken to ensure the availability of existing accommodation and equipment to all persons with visual impairment for the tram network;

(c) The measures taken to guarantee that the reforms under way apply to persons with a visual impairment or other sensory impairment, in compliance with the Committee's Views.

Deadline for response: 23 January 2018.

Third reply from the State party:	Received on 20 January 2018.
Action taken:	State party's follow-up observations transmitted to the author for comments. Deadline: 23 February 2018.
Decision:	A reminder will be sent to the author. Follow-up action to be determined at the next session in view of the State party's reply and of the author's comments.

6. Communication No. 11/2013, *Beasley v. Australia*	
Views adopted:	1 April 2016
First reply from the State party:	Due on 25 October 2016. Received on 24 October 2016.
Action taken:	Acknowledgement to the State party and transmittal to the author on 28 October 2016, with a deadline for comments of 28 November 2016.
Reply of the author:	After two reminders, the author replied that he would provide his comments early in 2018.
Decision:	Follow-up ongoing. Awaiting author's comments.

7. Communication No. 13/2013, *Michael Lockrey v. Australia*	
Views adopted:	1 April 2016
First reply from the State party:	Due on 25 October 2016. Received on 24 October 2016.
Action taken:	Acknowledgement to the State party and transmittal to the author on 28 October 2016, with a deadline for comments of 28 November 2016.
Reply of the author:	After two reminders, the author replied that he would provide his comments early in 2018.
Decision:	Follow-up ongoing. Awaiting author's comments.